No. 87-63

FILED
SEP 9 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

NORTHEASTERN PHARMACEUTICAL AND CHEMICAL COMPANY, INC., *et al.*,
Petitioners,
v.
UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF OF CHEMICAL LEAMAN TANK LINES, INC., THE KENDALL COMPANY, GENERAL DYNAMICS CORPORATION, AND NATIONAL TANK TRUCK CARRIERS ASSOCIATION, INC., AS *AMICI CURIAE* IN SUPPORT OF THE PETITION FOR CERTIORARI

STEVEN A. TASHER
JOHN P. DEAN *
STEVEN M. OSTER
DONOVAN LEISURE NEWTON & IRVINE
1850 K Street, N.W., Suite 1200
Washington, D.C. 20006
(202) 862-4700
Attorneys for Amici Curiae
Chemical Leaman Tank Lines, Inc.
The Kendall Company
General Dynamics Corporation
National Tank Truck Carriers Association, Inc.

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

The petition for certiorari presents several questions for review. *Amici curiae* filing this brief urge the Court to grant the petition with respect to the fourth question presented, which may be stated as follows: Whether merely holding a corporate office, and thereby possessing some authority over the corporation's waste handling policies, subjects an individual officer to civil liability under section 7003(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973(a), for acts undertaken by other corporate employees without the officer's knowledge, participation, or authorization.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
INTEREST OF *AMICI CURIAE*	1
FACTS	2
REASONS FOR GRANTING THE WRIT	3
I. Imposing RCRA Liability On Michaels Solely On The Basis Of His Corporate Office Is Inconsistent With Well Settled Principles Recognized In Virtually Every Other Circuit	3
II. Neither RCRA Nor Its Legislative History Supports The Eighth Circuit's Deviation From The General Rule Of Officer And Shareholder Liability	8
III. The Authority Relied Upon By The Court Of Appeals Does Not Support Imposition Of Liability On Michaels	11
CONCLUSION	13

TABLE OF AUTHORITIES

Cases: Page

Donsco, Inc. v. Casper Corp., 587 F.2d 602 (3d Cir. 1978) 7

Escude Cruz v. Ortho Pharmaceutical Corp., 619 F.2d 902 (1st Cir. 1980) 4, 12

Hagemeyer Chemical Co. v. Insect-O-Lite Co., 291 F.2d 696 (6th Cir. 1961) 6

Lobato v. Pay Less Drug Stores, 261 F.2d 406 (10th Cir. 1958) 5

Marks v. Polaroid Corp., 237 F.2d 428 (1st Cir. 1956), *cert. denied*, 352 U.S. 1005 (1957) 7

Mozingo v. Correct Mfg. Corp., 752 F.2d 168 (5th Cir. 1985) 8

Musikiwamba v. ESSI, Inc., 760 F.2d 740 (7th Cir. 1985) 5, 6

Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 806 F.2d 1565 (Fed. Cir. 1986) 7

Patel v. Wargo, 803 F.2d 632 (11th Cir. 1986) 6

State of New York v. Shore Realty Corp., 759 F.2d 1032 (2d Cir. 1985) 12

Tillman v. Wheaton-Haven Recreation Assn., Inc., 517 F.2d 1141 (4th Cir. 1975) 5, 6

Transgo, Inc. v. Ajac Transmission Parts Corp., 768 F.2d 1001 (9th Cir. 1985), *cert. denied*, 106 S. Ct. 802 (1986) 7

United States v. Johnson & Towers, Inc., 741 F.2d 662 (3d Cir. 1984), *cert. denied sub nom. Angel v. United States*, 469 U.S. 1208 (1985) 11

United States v. Pollution Abatement Services of Oswego, Inc., 763 F.2d 133 (2d Cir.), *cert. denied sub nom. Miller v. United States*, 106 S. Ct. 605 (1985) 7, 12

United States v. Price, 523 F. Supp. 1055 (D.N.J. 1981) 12

United States v. Van Diviner, 822 F.2d 960 (10th Cir. 1987) 6

United States v. Ward, 676 F.2d 94 (4th Cir.), *cert. denied*, 459 U.S. 835 (1982) 11

TABLE OF AUTHORITIES—Continued

Statutes: Page

15 U.S.C. § 77k 9
15 U.S.C. §1709 9
15 U.S.C. § 2601 *et seq.* 12
29 U.S.C. § 203(d) 6
42 U.S.C. § 407 12
42 U.S.C. § 6901 *et seq.* 2
42 U.S.C. § 6903(15) 8
42 U.S.C. § 6928(d) 11
42 U.S.C. § 6973(a) 3, 8, 9, 10, 12
42 U.S.C. § 9607(a) 7, 12

Legislative Materials:

H.R. Rep. No. 198, Part I, 98th Cong., 2d Sess. (1983), *reprinted in* 1984 Code Cong. & Ad. News 10
S. Rep. No. 172, 96th Cong., 2d Sess. (1979), *reprinted in* 1980 Code Cong. & Ad. News 9, 10

Miscellaneous:

3A Fletcher Cyc. Corp. § 1137 (Perm. Ed.) 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-63

NORTHEASTERN PHARMACEUTICAL AND CHEMICAL COMPANY, INC., *et al.*,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

BRIEF OF CHEMICAL LEAMAN TANK LINES, INC., THE KENDALL COMPANY, GENERAL DYNAMICS CORPORATION, AND NATIONAL TANK TRUCK CARRIERS ASSOCIATION, INC., AS *AMICI CURIAE* IN SUPPORT OF THE PETITION FOR CERTIORARI

INTEREST OF *AMICI CURIAE*

Chemical Leaman Tank Lines, Inc., The Kendall Company, and General Dynamics Corporation are corporations which, in varying degrees, handle or have in the past handled solid or hazardous wastes and hence are

subject to regulation under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* ("RCRA"). The National Tank Truck Carriers Association, Inc., is a trade association whose members include companies which, at times, handle or transport solid or hazardous wastes and hence are subject to regulation under RCRA.

The Eighth Circuit's ruling in this case would impose civil liability under RCRA upon persons solely by virtue of their being officers or shareholders of a corporation. Such persons could suffer liability in the absence of personal involvement in or awareness of the acts or omissions giving rise to the corporation's liability. *Amici* believe that this rule is erroneous as a matter of law. Moreover, it conflicts with the well-established rule recognized in other Circuits which precludes the imposition of personal liability upon corporate officers and shareholders for corporate acts which they neither committed nor authorized. If left undisturbed, the Eighth Circuit's rule will be a formidable disincentive to holding corporate office. It will be extremely difficult for corporations which handle solid or hazardous waste (which include, *inter alia*, virtually every manufacturing, petro-chemical, chemical, industrial, and commercial transportation concern in the United States) to attract capable corporate leadership.[1]

FACTS

Amici will set out briefly those facts material to the Court's resolution of the question discussed in this brief.

Northeastern Pharmaceutical and Chemical Company, Inc. ("NEPACCO"), disposed of hazardous wastes from its Verona, Missouri plant at a nearby site known as the Denney farm in mid-July of 1971. Appendix to the Petition at 57 (hereinafter cited as, *e.g.*, "A-57"). The dis-

[1] To the extent the opinion below identifies share ownership as a basis for liability for corporate acts, it also discourages investment, particularly in smaller companies.

posal was undertaken by, *inter alia*, Bill Ray, the plant manager of the Verona plant, A-56, A-57, and with the knowledge of another of NEPACCO's officers, petitioner Lee. *Id.* Petitioner Michaels, however, was present at the Verona plant only during its first year of operation (1970). A-53. By early 1971 he "had moved back to the state of Connecticut, leaving the direct management responsibility for the NEPACCO plant operation and for quality control with Lee." *Id.* Thus, Michaels was neither present at the plant nor did he have immediate control over plant operations at the time the NEPACCO wastes were sent to the site. Indeed, the District Court expressly found that the United States "failed to establish that Michaels had prior direct knowledge of the proposed plan to dispose of hazardous wastes at the Denney farm site." A-85. The Court of Appeals did not overturn this finding.

REASONS FOR GRANTING THE WRIT

I. Imposing RCRA Liability On Michaels Solely On The Basis Of His Corporate Office Is Inconsistent With Well Settled Principles Recognized In Virtually Every Other Circuit

Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), imposes liability upon any person who "has contributed or who is contributing to" the handling, storage, treatment, transportation, or disposal of hazardous wastes that "may present an imminent and substantial endangerment to health or the environment." In finding petitioner Michaels liable as a "contributor," the Court of Appeals relied solely upon his status as a corporate officer and shareholder who had authority over his subordinates, even though he neither knew of nor participated in the disposal of NEPACCO's wastes at the Denney farm site:

> Unlike Lee, Michaels was not personally involved in the actual decision to transport and dispose of the hazardous substances. As NEPACCO's corporate

> president and as a major NEPACCO shareholder, however, Michaels was the individual in charge of and directly responsible for all of NEPACCO's operations, including those at the Verona plant, and he had the ultimate authority to control the disposal of NEPACCO's hazardous substances.[2]

A-36. This holding is wholly inconsistent with traditional principles of individual civil liability for corporate acts. The general, if not universal, rule under both federal statutory law and common law is that a corporate officer or stockholder cannot be liable for corporate acts undertaken by others without his knowledge, participation, or authorization.[3]

For instance, in *Escude Cruz v. Ortho Pharmaceutical Corp.*, 619 F.2d 902 (1st Cir. 1980), the court stated that holding a corporate officer liable for corporate acts "require[s] . . . some showing of direct personal involvement by the corporate officer in some decision or action which is causally related to plaintiff's injury." *Id.* at 907. The plaintiff had alleged personal injury due to contamination from toxic substances in his workplace. He brought suit in the District of Puerto Rico against his employer, its corporate parent, and officers of the corporate parent. The individual defendants, who were not residents of Puerto Rico, sought dismissal on jurisdictional grounds. The district court held, *inter alia*, that the plaintiff had failed to make out a prima facie tort case against the individual defendants, necessary to satisfy Puerto Rico's long-arm statute. The First Circuit agreed, noting as follows:

---

[2] The District Court did not reach the question of individual liability under RCRA because it concluded that RCRA did not impose liability upon past, non-negligent off-site generators like NEPACCO. A-68. The Court of Appeals reversed that holding. A-27.

[3] We note that the Court of Appeals did not find facts sufficient to pierce the corporate veil. *See* A-33, A-35.

> "It is the general rule that if an officer or agent of a corporation directs or participates actively in the commission of a tortious act or an act from which a tort necessarily follows or may reasonably be expected to follow, he is personally liable to a third person for injuries proximately resulting therefrom. *But merely being an officer or agent of a corporation does not render one personally liable for a tortious act of the corporation.* Specific direction or sanction of, or active participation or cooperation in, a positively wrongful act of commission or omission which operates to the injury or prejudice of the complaining party is necessary to generate individual liability in damages of an officer or agent of a corporation for the tort of the corporation."

Id. (emphasis supplied) (quoting *Lobato v. Pay Less Drug Stores*, 261 F.2d 406, 408-09 (10th Cir. 1958)).

In *Tillman v. Wheaton-Haven Recreation Assn., Inc.*, 517 F.2d 1141 (4th Cir. 1975), the Fourth Circuit applied this rule in the context of a civil rights suit alleging that a community swimming pool had discriminated against black applicants for membership. The plaintiff joined as defendants the individual directors of the association. The Court of Appeals ruled: "If a director does not personally participate in the corporation's tort, general corporation law does not subject him to liability simply by virtue of his office." *Id.* at 1144 (citation omitted).

The Seventh Circuit adheres to the same rule. In *Musikiwamba v. ESSI, Inc.*, 760 F.2d 740 (7th Cir. 1985), the plaintiff alleged employment discrimination and joined as a defendant the chief executive officer and major shareholder of the corporate successor to his former employer. In affirming the district court's dismissal of the individual defendant, the Court of Appeals stated:

> We agree with the Fourth Circuit that personal liability cannot be imposed on a corporate official for

> the corporation's violation of section 1981 when that official is not alleged to have participated in the actual discrimination against the plaintiff.

Id. at 753 (citing *Tillman, supra*). The Seventh Circuit acknowledged the "clear" rule of corporate law that personal liability for corporate acts "cannot be imposed on a person merely because he is an officer, shareholder, and incorporator of that corporation." *Musikiwamba, supra*, 760 F.2d at 753. Rather, "[p]ersonal liability is imposed only when the officer is alleged to have taken part in the *illegal act* initially giving rise to the corporation's liability." *Id.* (emphasis in original).

This rule has been consistently applied throughout the circuits in cases arising under both federal statutes and the common law.[4] *See United States v. Van Diviner*, 822 F.2d 960, 963 (10th Cir. 1987) (under federal common law, personal liability "cannot be imposed on an individual merely because he is an officer or shareholder of that corporation"); *Hagemeyer Chemical Co. v. Insect-O-Lite Co.*, 291 F.2d 696, 699 (6th Cir. 1961) (in trademark infringement case, "[o]fficers, directors or shareholders of a corporation are not personally liable for wrongful or tortious conduct of the corporation or its other agents, unless there can be found some active or passive participation in such wrongful conduct by such persons"); *Patel v. Wargo*, 803 F.2d 632, 638 (11th Cir. 1986) (under Fair Labor Standards Act, 29 U.S.C. § 203(d), officer not liable where "neither responsible for [employee's] contract nor involved in the day-to-day operation of the facility"); 3A Fletcher Cyc. Corp. § 1137 (Perm. Ed.).

---

[4] Federal cases applying state common law are relevant to the issue of personal liability under RCRA since Congress expected courts to apply established common law principles under the statute. *See* Part II, *infra*.

Cases which have imposed liability upon corporate officers uniformly have involved instances of direct participation, as where the defendant was the "guiding spirit" behind the wrongful conduct, *Marks v. Polaroid Corp.*, 237 F.2d 428, 435 (1st Cir. 1956), *cert. denied*, 352 U.S. 1005 (1957) (patent infringement), the "central figure" in the challenged corporate activity, *Donsco, Inc. v. Casper Corp.*, 587 F.2d 602, 605-6 (3d Cir. 1978) (unfair competition), or "actively aid[ed] and abet[ted]" the corporation's wrongful acts. *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1579 (Fed. Cir. 1986) (patent infringement). *Accord, Transgo, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001, 1021 (9th Cir. 1985), *cert. denied*, 106 S. Ct. 802 (1986) (corporate officer "personally liable for all torts which he authorizes or directs or in which he participates"); *United States v. Pollution Abatement Services of Oswego, Inc.*, 763 F.2d 133, 135 (2d Cir.), *cert. denied sub nom. Miller v. United States*, 106 S. Ct. 605 (1985) (corporate officers' and shareholders' liability "bottomed on their personal involvement in the firm's activities").

The evidence adduced with respect to Michaels falls far short of what this authority requires. The District Court made an express finding, which the Court of Appeals did not overturn, that Michaels had no prior knowledge of NEPACCO's plan to dispose of wastes at the site. A-85.[5] In the absence of any participation in,

---

[5] Although the District Court states that both petitioners Lee and Michaels were "actively involved in the planning and implementation of NEPACCO's disposal practices," A-107, it did so in the context of holding Michaels liable as an "owner or operator" under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607(a), because he participated in the management of NEPACCO. The Court of Appeals reversed this holding. A-31. It is not disputed that, although he participated in the management of NEPACCO, and was involved in some waste disposal negotiations before moving to Connecticut, Michaels was unaware of the disposal of NEPACCO wastes at the Denney farm.

authorization of, or knowledge of the events giving rise to NEPACCO's liability, the Court of Appeals imposed liability on him simply because of his "ultimate authority" and being "directly responsible" as a corporate officer and shareholder. A-36. That holding cannot therefore be reconciled with the rule universally followed by other circuits.[6]

II. Neither RCRA Nor Its Legislative History Supports The Eighth Circuit's Deviation From The General Rule Of Officer And Shareholder Liability

Of course, had it wished to do so, Congress could have imposed strict liability under section 7003 of RCRA upon corporate officers or shareholders without requiring proof of their personal involvement in the handling of hazardous wastes. Neither the language of the statute nor its legislative history, however, indicates any such intent.

Although section 7003(a) imposes liability upon "any person . . . who has contributed or who is contributing to" the handling, storage, treatment, transportation or disposal of hazardous wastes, and although the statutory definition of "person" includes natural persons, 42 U.S.C. § 6903(15), nothing in the language of section 7003(a) gives even a hint that Congress believed that a corporate officer or shareholder contributes to the corporation's hazardous waste activities in the absence of any evidence that he or she was personally involved in such activities.

---

[6] Elsewhere the Court of Appeals notes that Michaels was aware that "NEPACCO's manufacturing process produced various hazardous and toxic byproducts . . . ." A-4. If Michaels can be held personally liable merely on the basis of such knowledge without any personal involvement in the disposal at issue, any corporate officer who fails to maintain an almost total ignorance of the corporation's general business practices may suffer personal liability for the handling of its byproducts by others. *See Mozingo v. Correct Mfg. Corp.*, 752 F.2d 168, 174 (5th Cir. 1985).

The statutory language certainly does not say that merely possessing corporate authority is sufficient to impose liability upon an officer or shareholder.

Indeed, when Congress seeks to impose liability upon corporate officials solely by virtue of their position, it does so explicitly. *See, e.g.*, 15 U.S.C. § 77k (purchaser of security who relied on registration statement containing untrue facts or some material omission may sue, *inter alia*, signatories of statement and directors of the issuer at the time of filing); 15 U.S.C. § 1709 (purchaser of a lot who relied on a property report which contained untrue facts or some material omission may sue developer or agent).

Nor does the legislative history of section 7003(a) support the Court of Appeals' holding. When Congress amended and reauthorized RCRA in 1980, it stated as follows:

> Like other imminent and substantial endangerment provisions in environmental statutes, (*e.g.*, section 504 of the Clean Water Act, section 303 of the Clean Air Act, and section 1431 of the Safe Drinking Water Act), section 7003 is essentially a codification of common law public nuisance remedies. . . .
>
> Section 7003, therefore, incorporates the legal theories used for centuries to assess liability for creating a public nuisance (including intentional tort, negligency, and strict liability) and to determine appropriate remedies. . . .

S. Rep. No. 172, 96th Cong., 2d Sess. 5 (1979), *reprinted in* 1980 Code Cong. & Ad. News 5019, 5023. As noted above, established common law rules preclude imposition of liability for corporate acts solely on the basis of corporate office or stock ownership.[7]

---

[7] We note that the Senate Report also indicates that some terms in section 7003 should be construed more liberally than their com-

Moreover, in reporting favorably on the 1984 RCRA amendments, the House Committee on Energy and Commerce stated the following with respect to section 7003 (a):

> . . . Section 7003 is *clarified to establish that it applies to any act*, whether past or present, which has resulted in or may result in an imminent and substantial endangerment to public health or the environment. . . .
>
> The amendment reflects the long-standing view that generators and other *persons involved in* the handling, storage, treatment, transportation, or disposal of hazardous wastes must share in responsibility for the abatement of the hazards *arising from their activities.*

H.R. Rep. No. 198, Part I, 98th Cong., 2d Sess. 48 (1983), *reprinted in* 1984 Code Cong. & Ad. News 5607 (emphasis supplied). Because Congress intended to impose liability under section 7003(a) for "acts," "involvement," and "activities," there is no basis to extend liability to one who simply has "authority" to act but fails to do so where he has no knowledge of the events underlying liability.[8] Put another way, Michaels, on the record below, was neither an actor nor involved in the disposal of NEPACCO's wastes at the site and hence cannot be a contributor under section 7003(a).

---

mon law counterparts, including the term "contributing to." S. Rep. No. 172, *supra*, at 5. The Report, however, explains that this language was meant to embrace off-site generators of hazardous waste. *Id.* There is nothing in the legislative history which suggests Congress intended to do away with common law principles of corporate officer and shareholder liability.

[8] Even if Congress intended that an officer should be liable for intentionally or recklessly failing to become informed of facts indicating that the corporation was liable, nothing in the record indicates Michaels was guilty of any such failure.

There was therefore no statutory basis for the Court of Appeals to disregard the well-established rule precluding imposition of liability for corporate acts solely on the basis of one's status as an officer or stockholder of the corporation.

III. The Authority Relied Upon By The Court Of Appeals Does Not Support Imposition Of Liability On Michaels

The authority cited by the Court below in support of imposing liability on petitioner Michaels is inapposite because in each case the individual defendant found liable played an active role in the events giving rise to liability.

In *United States v. Johnson & Towers, Inc.*, 741 F.2d 662 (3d Cir. 1984), *cert. denied sub nom. Angel v. United States*, 469 U.S. 1208 (1985), the issue before the court was whether the individual defendants could be prosecuted for knowing violations of criminal provisions of RCRA. *Id.* at 665. Since the district court had dismissed the indictments, the Court of Appeals only faced the narrow question whether the term "person" contained in 42 U.S.C. § 6928(d) included responsible corporate officials. As the Court noted:

> The indictment charged that both individual defendants "managed, supervised, and directed a substantial portion of Johnson & Towers' operations at the Mount Laurel plant, including those related to . . . disposal of hazardous wastes and pollutants." App. at 7a. This case reaches us without any evidence or findings of the defendants' actual knowledge of the facts at issue, and with inconsistent descriptions of defendants' responsibilities.

Id. at 670. Thus the Court did not address the question whether a corporate official who did not know of or participate in such acts would be liable.

United States v. Ward, 676 F.2d 94 (4th Cir.), *cert. denied*, 459 U.S. 835 (1982), is another criminal case,

involving the unlawful disposal of toxic substances in violation of the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.* The jury found that the convicted corporate president was an "active participant" in a scheme to spray PCB-laced waste oil along rural North Carolina roadsides. *Id.* at 97. In *United States v. Price*, 523 F. Supp. 1055 (D.N.J. 1981), a civil RCRA § 7003 case, the individual defendants were either owners, operators or employees of a landfill who had themselves improperly stored chemical waste. *Id.* at 1073. The individual defendants operated the landfill as a sole proprietorship rather than a corporation, *Id.* at 1058, and then sold it to a partnership. *Id.* Thus not only had the individual defendants actively participated in the events giving rise to liability, but corporate defenses were unavailable to them.

In *United States v. Pollution Abatement Services of Oswego, supra*, the court noted that the individual defendants, who were stockholders and officers of the defendant corporation, were "responsible for" the corporation's "illegal dumping and storage activities." *Id.*, 763 F.2d at 135. In holding them liable under section 13 of the Rivers and Harbors Act, 42 U.S.C. § 407, the court stated that their liability "was not premised solely on their corporate offices or ownership, but was bottomed on their personal involvement in the firm's activities." *Id.* Finally, in *State of New York v. Shore Realty Corp.*, 759 F.2d 1032 (2d Cir. 1985), a case decided under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607(a), and New York's common law of nuisance, the individual defendant was the sole stockholder and active officer of the defendant corporation. *Id.* at 1034. The Second Circuit found it "beyond dispute that LeoGrande [the individual] specifically directs, sanctions, and actively participates in Shore's maintenance of the nuisance." *Id.* at 1052 (citing *Escude Cruz, supra*, with approval).

CONCLUSION

For the foregoing reasons, *amici* respectfully request the Court to grant the petition for certiorari on the fourth question presented by petitioners.

Dated: September 9, 1987

Respectfully submitted,

STEVEN A. TASHER
JOHN P. DEAN *
STEVEN M. OSTER
DONOVAN LEISURE NEWTON & IRVINE
1850 K Street, N.W., Suite 1200
Washington, D.C. 20006
(202) 862-4700
Attorneys for Amici Curiae
Chemical Leaman Tank Lines, Inc.
The Kendall Company
General Dynamics Corporation
National Tank Truck Carriers Association, Inc.

* Counsel of Record